



PAC • CAMPAIGN • NON-PROFIT • POLITICAL LAW

Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463
ATTN: Jeff S. Jordan, Esquire

RE: MUR 6776

Dear Mr. Jordan:

I have enclosed a Response, on behalf of my client Mr. Niger Innis, to the Complaint in the above referenced Matter Under Review.

Please contact me if you have any questions about this Response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Backer', written over the word 'Sincerely,'.

Dan Backer, Esquire
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dbacker@dbcapitolstrategies.com

OFFICE
2014 FEB 12 PM 12:18

Enclosure: MUR 6776 Response

FEDERAL ELECTION COMMISSION

2014 FEB 12 10:12:16

IN THE MATTER OF: GREGORY D. SMITH

MUR #: 6776

OFFICE OF
COUNCIL

V.
NIGER INNIS
NIGER INNIS ACTION FUND
NIGER INNIS FOR CONGRESS EXPLORATORY COMMITTEE
NIGER INNIS FOR CONGRESS

RESPONSE

Introduction

Mr. Niger Innis and the Niger Innis for Congress, previously known as Niger Innis Action Fund ("Respondent"), through counsel, hereby file this formal response to the ill-informed and politically motivated Complaint by Mr. Gregory D. Smith ("Complainant") alleging violations of the Federal Election Campaign Act of 1971, as amended, (the "FECA") related to testing the waters activity.

Respondent requests immediate dismissal of these frivolous allegations. Prior to Mr. Niger Innis's filing of the Federal Election Commission ("FEC") Form 1 and Form 2 on January 2, Respondent operated in full compliance with all applicable campaign finance laws and regulations and Respondent has not, nor is there any reason to believe that he has, committed any violations of the FECA or related regulations. Moreover, the nonsensical ramblings of Complainant amount to little more than a complete failure to understand applicable campaign finance law and likely bad advice received by certain shady political operatives in Nevada.

Testing the Waters Permissible and Necessary Activity

An individual may explore the feasibility of becoming a candidate for federal office, "test the waters," without registering, or reporting, to the FEC even where such individual raises over five thousand dollars (\$5,000). 11 C.F.R. § 100.72(a).

An individual is expressly permitted by law to conduct the following test the waters activities: conducting a poll; making telephone calls within and without the District for the purpose of gauging support and raising funds; and traveling. *Id.* The statute specifically provides that these activities are *examples*. *Id.* An individual is not limited to conducting solely such activities listed as examples.

Funds received by an individual solely for the purpose of testing the waters are not considered contributions; however, only funds permissible under the FECA may be used for test the waters activity. *Id.* Individuals are prohibited from accepting contributions, including goods or services, in excess of the legal contribution limits. 11 C.F.R. § 110.1; § 110.2; and § 110.3. Individuals are also prohibited from accepting funds from labor organizations, corporations, foreign nationals, or federal government contractors. 11 C.F.R. § 114.2(a)(b) and (d); 115.2.

Individuals are obligated to keep records of all funds received for test the waters activity, and if the individual subsequently decides to become a candidate, only then are test the waters funds received, and expended, by an individual considered contributions subject to reporting requirements under the FECA. 11 C.F.R. § 100.72(a).

An individual is not required by law to form an exploratory committee. Where an individual chooses to form such a committee, the exploratory committee is not considered a political committee under the FECA and is not required to register with the FEC. The FEC suggests that the name of the exploratory committee must not refer to the individual as a candidate. *See* AO 1981-32; *See also* FEC Testing the Waters Brochure (Mar. 2011). Although this is only guidance on the law, an individual who declares themselves as a candidate, through referring to themselves as a candidate in his committee name, clearly indicates such individual has decided to run for federal office and is no longer solely considering the feasibility of running for office which in turn triggers reporting requirements as explained above.

Certain campaign activities, however, indicate an individual has become a candidate, and thus triggers FEC filing and reporting requirements, including: using general public political advertising to publicize his intention to campaign; raising funds in excess of what could reasonably be expected to be used for exploratory purposes; activities designed to amass funds to be spent after he becomes a candidate; making or authorizing statements that refer to him as a candidate for a particular office; activities are in close proximity to the election or protracted period of time; or action to qualify for the ballot under state law. 11 C.F.R. § 100.72(b)(1)-(4).

Denial of Absurd Allegations Raised in Complaint

Respondent operated, at all times, in full compliance with all applicable campaign finance laws and regulations and denies all allegations in the Complaint. Particularly, prior to filing FEC Form 1 and Form 2, Respondent did not conduct testing the waters activity over a protracted period, did not make or authorize statements regarding his intention to run; did not use general public political advertising to publicize his intention to campaign; and did not raise "far more" money than necessary to test the waters.

From approximately July 2013 through December 2013, Respondent properly conducted test the waters activities, within and without the District, for the purpose of gauging support and raising funds in accordance with 11 C.F.R. § 100.72(a). A sixth month period of test the waters activity is usual and expected to properly explore the feasibility of challenging a Congressional incumbent.

The Complainant alleges that "Mr. Innis has been touting and planning a run for Congress in Nevada's District 4" and references a proposal to the National Republican Congressional Committee ("NRCC"), Exhibit 1, as the basis for this allegation. Complaint ¶ 2; Exhibit 1. This Exhibit is clearly marked as a proposal, and a proposal is, by definition, an act of stating something for consideration. Respondent privately presented such proposal to the NRCC for the sole purpose of exploring the feasibility of becoming a candidate for federal office. It is perfectly expected that an individual considering the feasibility of running for federal office would consult the NRCC, a political committee who is devoted to maintaining and increasing the 232 member

Republican majority in the United States House of Representatives, on the feasibility of running for office.

Mr. Innis properly conducted test the waters activity through his exploratory committee, Niger Innis Action Fund. The Complainant specifically alleges "Mr. Innis appears to have formed one, and perhaps two, 'exploratory committees,' or funds, to begin raising monies." Complaint ¶ 3. The FECA and FEC regulations do not restrict the formation of exploratory committees to one per individual nor are individuals even required to form a committee at all. However, the Complainant is simply incorrect; Respondent formed a single operating exploratory committee, which in turn became the campaign committee.

The Complainant also falsely alleges the Respondent appeared regularly on media and at functions discussing his intent to run for Congress and that this activity lasted throughout the summer, fall, and winter of 2013-2014. Complaint ¶ 3. Respondent is without knowledge to either admit or deny the allegations here as Complainant only makes general allegations and points to no specific media appearances or functions where Respondent allegedly violated campaign finance laws and regulations. While testing the waters, Mr. Innis did not purchase any public air time nor did he appear on any media channels in violation of campaign finance laws and regulations. Mr. Innis, however, is a regular public commentator on social issues and has frequently appeared on a variety of media channels and attended various functions separate from his own testing the waters activity while fully complying with applicable campaign finance laws and regulations.

The Complainant alleges Mr. Innis violated the testing the waters provisions by setting up a website paid for by the Niger Innis Action Fund. Complaint ¶ 4; Exhibit 2. This is clearly necessary testing the waters committee activity to determine the feasibility of running for office and the related expenditures for such testing the waters activity are fully permitted by law.

The Complainant alleges Respondent's website included a portal for accepting online contributions from unknown persons. Complaint ¶ 4; Exhibit 2. Similar to the express provisions authorizing individuals to make telephone calls to gauge support and raise funds, such portal clearly shows that the portal was established to gauge support and raise funds for Respondent's testing the waters activity: "to explore the possibility if the time is right for Niger Innis, with his conservative leadership and values, to run for Congress in Nevada District 4." Complaint Exhibit 2. Further, such activity does not constitute general public advertising as the portal is expressly labeled as testing the waters activity.

Additionally, Complainant alleges that Respondent "encouraged attendance and contributions at a high-level fundraising event." Complaint ¶ 5; Exhibit 4. There are no prohibitions against hosting a "high-level fundraising event" where such event is for test the waters purposes. An individual may continue to test the waters even where such individual raises over five thousand dollars (\$5,000) and funds received by an individual solely for the purpose of testing the waters are not considered contributions. 11 C.F.R. § 100.72(a). The referenced event flyer, Complaint Exhibit 3, shows the event was specifically held to support Mr. Innis and his Congressional Exploratory Committee (the Niger Innis Action Fund). Further, a close reading of the article, attached to the Complaint as Exhibit 4, demonstrates that, while Mr. Innis expected to raise at

least fifty thousand dollars (\$50,000) at the event, he indicated his "ability to raise money will determine whether he [Mr. Innis] officially runs for Congress." Complaint Exhibit 4 ¶ 12. While the sum of fifty thousand dollars (\$50,000) may seem great to Complainant, testing the waters activity necessarily requires, and applicable laws and regulations appropriately permits, raising funds to explore the feasibility of challenging a Congressional incumbent, particularly in excess of five thousand dollars (\$5,000), without triggering formal candidate status and accompanying reporting requirements. Complainant cites no basis for the absurd proposition that testing the waters activity is somehow limited to an arbitrary amount of fifty thousand dollars (\$50,000), which is in no way supported by the express language of the applicable laws and regulations.

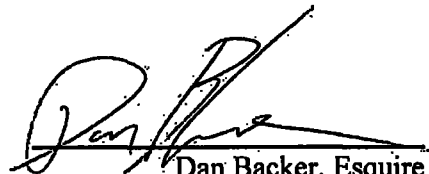
Respondent did not violate any campaign finance laws by posting a video of Mr. Herman Cain speaking at Respondent's testing the waters event, discussed above, on Mr. Innis's personal website, www.NigerInnis.com. Complaint ¶ 5; Exhibit 5. Mr. Innis posted the referenced video on his own personal website, which is wholly distinct and separate from Respondent's testing the waters activity. Mr. Cain does not make any statements, in such video, referencing Mr. Innis as a candidate for federal office nor does the video publicize any intention of Mr. Innis to run for office at that time. Accordingly, Respondent operated in full compliance with all applicable campaign finance laws and regulations and denies all allegations in the Complaint, which are little more than cheap political shenanigans.

Conclusion

Respondent, through counsel, respectfully requests you recommend this matter for immediate dismissal as Respondent has not, nor is there any reason to believe that he has, committed any violations of the FECA and further use of FEC resources are not warranted in this matter.

Dated this 11th day of February, 2014.

Respectfully Submitted,


Dan Backer, Esquire
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Christina Sirois, Esquire
(240)-210-1163 Direct
Counsel for Respondent
DB Capitol Strategies PLLC
717 King Street Suite 300
Alexandria, VA 22314



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Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL
Please use one form for each Respondent/Entity/Treasurer
FAX (202) 219-3923

MUR # 6776

NAME OF COUNSEL: Dan Backer; Christina Sirois

FIRM: DB Capitol Strategies, PLLC

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Alexandria, Virginia 22314

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The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

02/04/2014

Date

Niger B. Innis
Respondent/Agent -Signature

Candidate

Title (Treasurer/Candidate/Owner)

NAMED RESPONDENT: Niger Innis

MAILING ADDRESS: 7495 West Azure Drive
(Please Print)

Las Vegas, NV 89130

TELEPHONE- HOME _____

BUSINESS (_____) _____

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation